

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

P. DALE DESKINS,

Plaintiff,

vs.

ASSOCIATED CREDIT SERVICES,
INC., et al.,

Defendants.

No. CV-08-049-LRS

**ORDER RE MOTIONS
FOR ENTRY OF DEFAULT
AND FOR DEFAULT
JUDGMENT**

Plaintiff has filed a “Motion For Entry Of Default As To Defendant John M. Solberg, Et Ux., Eric M. Solberg, Et. Ux., And Associated Credit Services, Inc., A Washington Corporation” (Ct. Rec. 12). Plaintiff has also filed a “Motion For Order Of Default Judgment” (Ct. Rec. 14) against the same Defendants.

Entry of Clerk’s default must be accomplished before the Clerk or the Court can consider entry of default judgment. See Fed. R. Civ. P. 55(a) and (b). Before Clerk’s default can be entered, there must be proof that the defendants have been properly served with a summons and complaint. Having reviewed the record, the court is not satisfied that proper service has been effected upon the Defendants against whom Plaintiff seeks entry of default.

In its March 3, 2008 order (Ct. Rec. 6), the court directed the U.S. Marshal Service to effectuate service in compliance with Fed. R. Civ. P. 4(d) by sending,

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1 via First Class Mail, a copy of the Summons and Complaint to the named
2 Defendants, together with a Notice of Lawsuit and Request for Waiver of Service
3 of Summons, two copies of the Waiver of Service of Summons and a return
4 envelope, postage prepaid, addressed to the sender. Returns of service filed by the
5 Marshal Service indicate that service was effected on Defendants John M.
6 Solberg, Et Ux., Eric M. Solberg, Et. Ux., And Associated Credit Services, Inc.
7 by certified mail and return receipt. (Ct. Rec. 7, 8 and 10).¹ It is not clear if just a
8 summons and complaint was sent to Defendants, or if a Request For Waiver Of
9 Service was included therewith.

10 When a defendant fails to waive service (at least 30 days after the Request
11 For Waiver was mailed), proper service must still be effectuated upon the
12 defendant, although the defendant is then liable for the costs of service. Fed. R.
13 Civ. P. 4(d)(2). The court is unaware of any state or federal law that authorizes
14 service upon individual or corporate defendants simply by mailing a copy of the
15 summons and complaint to them by certified mail, return receipt requested.
16 Pursuant to RCW 4.28.080(15), a copy of the summons and complaint shall be
17 served upon an individual personally, or by leaving a copy of the same at the
18 house of his or her usual abode with some person of suitable age and discretion
19 then resident therein. Pursuant to Fed. R. Civ. P. 4(e)(2), service upon an
20 individual is accomplished by delivering a copy of the summons and complaint to
21 the individual personally; leaving a copy of each at the individual's dwelling or
22 usual place of abode with someone of suitable age and discretion who resides

23
24 ¹ The Marshal Service was unable to effect this type of service (certified
25 mail and return receipt) on Defendants David M. Solberg, et ux., and Paul J.
26 Wasson, et ux. (Ct. Rec. 9 and 18). Plaintiff's motions do not seek entry of
27 default and default judgment against these Defendants.

1 there; or by delivering a copy of each to an agent authorized by appointment or by
2 law to receive service of process. Pursuant to Fed. R. Civ. P. 4(h), a corporation
3 must be served in the manner prescribed by Rule 4(e)(1) for serving an individual,
4 or by delivering a copy of the summons and complaint to an officer, a managing or
5 general agent, or any agent authorized by appointment or by law to receive service
6 of process and, if the agent is one authorized by statute and the statute so requires,
7 by also mailing a copy to each defendant.

8 If the Marshal Service did not mail Requests For Waiver Of Service to the
9 Defendants, the Marshal Service shall now do so pursuant to the specific
10 requirements of Fed. R. Civ. P. 4(d)(1). The Marshal Service shall send, by First
11 Class Mail, a copy of the Summons and Complaint to the named Defendants,
12 together with a Notice of Lawsuit and Request for Waiver of Service of Summons,
13 two copies of the Waiver of Service of Summons and a return envelope, postage
14 prepaid, addressed to the sender. The costs of mailing shall be advanced by the
15 United States. If all Defendants do not return the Waiver of Service within the
16 appropriate time period, the United States Marshal shall personally serve the
17 unresponsive Defendants in compliance with Rule 4(e) and (h). The United States
18 Marshal shall make the necessary attempts to effectuate such personal service until
19 service is effected or direction from the Court is needed.

20 If the Marshal Service did mail Requests For Waiver Of Service to the
21 Defendants in compliance with all of the specific requirements of Fed. R. Civ. P.
22 4(d)(1) and the Defendants have failed to timely sign and return the same, the
23 the Marshal Service is directed to personally serve each of the named Defendants
24 immediately in compliance with Fed. R. Civ. P. 4(e) (individuals) and
25 4(h)(corporation).

26 It does not appear that new or amended summonses need to be issued for the

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purpose of effectuating proper service.

Until proper service is effectuated, default cannot be entered against any of the Defendants. Accordingly, Plaintiff's motions (Ct. Rec. 12 and 14) are **DENIED**, although in the event some or all of the Defendants do not file an answer within the requisite time after being properly served, the Plaintiff may file a new motion for entry of Clerk's default as to those Defendants and once said default has been entered, may move for default judgment against them.

IT IS SO ORDERED. The District Court Executive is directed to enter this order and forward a copy to the Plaintiff and to the United States Marshal Service for the Eastern District of Washington.

DATED this 19th day of May, 2008.

s/Lonny R. Suko

LONNY R. SUKO
United States District Judge